

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, CR 18 - 40100

Plaintiff,

vs.

FACTUAL BASIS STATEMENT

WALLACE TANG; and
BLUE SKY ENGINEERING,
INCORPORATED,

Defendants.

The Defendants state that the following facts are true, and the parties agree that they establish a factual basis for the offense(s) to which the Defendants are pleading guilty pursuant to Fed. R. Crim. P. 11(b)(3):

On May 21, 1998, MicroAssembly Technologies, Incorporated ("MicroAssembly"), by and through its founder, President, and Secretary Wallace Tang, registered as a domestic, for-profit corporation with the California Secretary of State. Defendant Tang served in those capacities until on or about 2014. On March 19, 2014, MicroAssembly claimed a Fargo, North Dakota, address at which point he served as a director for business matters. On July 5, 2012, Defendant Blue Sky Engineering, Incorporated ("Blue Sky"), at the direction and behest of Tang, was registered as a foreign, for-profit

corporation with the North Dakota Secretary of State. Blue Sky was registered as a foreign corporation in California on May 15, 2015. Effective May 15, 2013, the address for Blue Sky was 417 Maine Avenue, Suite 3, Fargo, North Dakota 58103. While an individual known to the Grand Jury and United States served as President of Blue Sky for a period of time, Tang served as Blue Sky's Chief Executive Officer, Chief Financial Officer, Secretary, and bank account signatory.

MicroAssembly was the parent corporate entity of Blue Sky, and other corporate entities, including Laserlith Corporation ("Laserlith") and Black Hills Nanosystems Corporation ("Black Hills Nano"). Sine Chao served as the Principle Corporate Officer of Laserlith; Gina Kim served as the Principal Corporate Officer of Black Hills Nano. All of these entities were related and conducted operations in the State and District of South Dakota, affecting interstate commerce, and Black Hills Nano's registered agent for service of process was located in Sioux Falls, South Dakota.

Although the principals interchanged the names of the entities for various projects, the work of these individuals and entities significantly overlapped. Chao also served as MicroAssembly's Chief Financial Officer and as a former Director. Kim worked as an engineer for MicroAssembly. While Kim served as Black Hills Nano's President, Tang served as its Director of Research and Development. While Chao served as Laserlith's President, Tang served as a company Officer and Kim served as its Corporate Secretary.

The National Science Foundation (“NSF”), the National Aeronautics and Space Administration (“NASA”), and the Department of Energy (“DOE”) participated in the Small Business Innovation Research (“SBIR”) Program and Small Business Transfer Technology Research (“STTR”) Program through which Defendants sought and obtained federal funds. All SBIR and STTR proposals were required to be electronically submitted to the federal agency offering the grant or contract opportunity. NSF’s, NASA’s, and DOE’s computer servers used to receive contract proposals were located in Virginia, Mississippi and Maryland, respectively. Federal SBIR and STTR grant and contract award payments were electronically transferred from the associated federal agency, through the United States Department of the Treasury, and then wired to a business bank account identified by the Defendants. Defendants also used wires to transmit interstate communications to and from South Dakota.

Beginning in approximately 2012, and continuing through 2016, within the State and District of South Dakota and elsewhere, Defendant Blue Sky, along with MicroAssembly and with others both known and unknown to the Grand Jury and United States, did unlawfully, voluntarily, intentionally, and knowingly conspire, combine, confederate, and agree together and with each other to devise a scheme and artifice to defraud, and obtain money and property by means of false and fraudulent pretenses, representations, and promises, by sending and causing to be sent a sign, signal, and sound to be transmitted by means of wire communications in interstate and foreign commerce, in violation of 18 U.S.C. § 1349. The object of Defendant Blue Sky’s conspiracy was to obtain federally-

[3]

funded projects by and through material misrepresentations, statements, and omissions, thereby depriving the United States the ability to fund other small businesses and resulting in the enrichment of Defendant Blue Sky, MicroAssembly, and others.

In furtherance of the conspiracy and to accomplish the object thereof, Defendant Blue Sky did commit the following overt acts, as well as others, in the District of South Dakota and elsewhere, and at all times relevant to this case:

1. Defendant Blue Sky applied for and received federal awards. Defendant Blue Sky communicated with, transmitted proposals through, and received payments by electronic communications and wires. These electronic transmissions and wires were interstate.
2. Defendant Blue Sky applied for and received federal awards for essentially equivalent work, or portions thereof, concealing the existence of the awards and the relationships between related companies from the awarding agencies.
3. During the application process, Defendant Blue Sky misrepresented the existence and use of distinct company facilities, equipment, and operations in South Dakota and North Dakota, and elsewhere outside of California. These representations and statements were false in that all of the companies were co-located in a common facility in Richmond, California, sharing the same resources and performing essentially equivalent work, or portions thereof.
4. Between 2012 and 2016, Defendant Blue Sky submitted, or caused the submission of, wire transmissions of approximately eight (8) false claims and [4]

materially false statements with knowledge of their falsity, solely to obtain federal awards. “Knowledge” is defined as being (1) actual knowledge, (2) deliberate ignorance of the truth or falsity of the information, or (3) reckless disregard of the truth or falsity of the information. The term “material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

5. Defendant Blue Sky’s actions, false statements and claims, and misrepresentations included the preparation and submission of proposals for awards under the NSF, NASA, and DOE programs, specifically involving costs, employees, the eligibility of principal investigators, suitability of facilities, location of facilities, subcontractors, consultants, letters of support, and certifications submitted to NSF, NASA, and DOE.

6. Defendant Blue Sky’s actions, false statements and claims, and material misrepresentations resulted in the receipt of payments from the U.S. government. The fraudulently-obtained NSF, NASA, and DOE awards totaled \$1,084,418.60, joint and several between MicroAssembly, Blue Sky, Laserlith, and Black Hills Nano. As a result of Defendant Blue Sky’s scheme and artifice to defraud and to obtain money and property by means of false, fictitious, and fraudulent pretenses, representations, and promises relating to material facts, Defendant Blue Sky knowingly presented or caused to be presented a false and fraudulent claim via interstate wire transmissions and unlawfully obtained an award from a federal agency, as set forth below:

NSF 2013		
Blue Sky	\$149,994.00	High Efficiency Flexible Solar Panels regarding proposal number 1315777

The above-awarded amount represents Defendant Blue Sky's exclusive portion of the total loss to the United States of \$1,084,418.60. Defendant Blue Sky's actions were in violation of 18 U.S.C. § 1349.

Between 2012 and 2016 and at all times relevant to this case, Wallace Tang, as executive corporate principal and officer, submitted, or caused the submission of, the following wire transmissions of seven (7) materially false statements with knowledge of their falsity, solely to obtain federal awards for Defendant Blue Sky and its related entities from NSF, NASA, or DOE.

Date		
12/3/2012	NSF proposal 1315777 titled High Efficiency Flexible Solar Panels	False information provided regarding primary performance location personnel, facilities, and other "essentially equivalent" or duplicate proposals.
3/28/2013	NSF SBIR/STTR Administrative Questions for NSF proposal 1315777 titled High Efficiency Flexible Solar Panels	False statements made to task overlap with other proposals, to primary employment of affiliated companies, and to location of significant research.
4/8/2013	NSF SBIR/STTR Funding Agreement Certification for NSF proposal 1315777 titled High Efficiency Flexible Solar Panels	False Statements made to place of performance and to "essentially equivalent" or a portion of the work proposed.
7/15/2014	NSF SBIR/STTR Final Report Cover Page for NSF proposal 1315777 titled	False statements or information provided regarding "essentially equivalent work,"

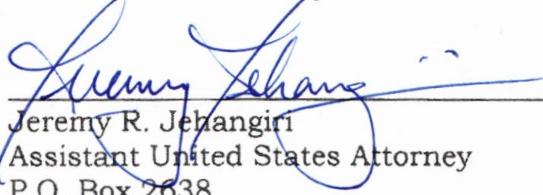
	High Efficiency Flexible Solar Panels	primary employment, and facilities.
1/28/2015	NASA proposal (number H8.03-8999, entitled "Low-Cost Multi-Junction Photovoltaic Panels")	False information provided regarding personnel, facilities, and other "essentially equivalent" or duplicate proposals.
1/28/2015	Form A for NASA proposal (number H8.03-8999, entitled "Low-Cost Multi-Junction Photovoltaic Panels")	False information provided regarding "essentially equivalent work" or "a portion of the work proposed" being submitted or funded by another federal agency.
2/3/2015	DOE proposal (number 218692, entitled "High Density Connectors and Cables for Vertex Detectors")	False information provided regarding personnel, equipment, and facilities.

As to Count 2 specifically and solely, on January 28, 2015, in the District of South Dakota and elsewhere, Defendant Wallace Tang, for the purpose of executing and attempting to execute the aforementioned scheme and artifice to defraud the United States and its agencies and to obtain money and property by means of false, fictitious and fraudulent pretenses, representations, and promises relating to material facts, did knowingly transmit and cause to be transmitted by means of wire communications in interstate or foreign commerce writings, signs, signals, pictures, and sounds as follows: a wire communication from MicroAssembly, by and through Defendant Blue Sky as general contractor and with Black Hills Nano serving as subcontractor, containing NASA proposal numbered H8.03-8999, entitled "Low Cost Multi-Junction Photovoltaic Panels." This proposal was fraudulent and contained material representations in that it contained "essentially equivalent work," or a portion thereof, to proposals

submitted as part of the conspiracy, as set forth above and as alleged in the Information, between Defendant Blue Sky, MicroAssembly, Laserlith, and Black Hills Nano. After transmitting this wire containing fraudulent and material representations, Defendant Tang withdrew the proposal from NASA, thereby resulting in no actual loss for purposes of Count 2 of the Information and this Plea Agreement. Although NASA proposal numbered H8.03-8999 was later withdrawn, Defendant Tang submitted the proposal with the intent to defraud NASA.

RONALD A. PARSONS, JR.
United States Attorney

8/13/18
Date



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8-8-18
Date



Wallace Tang, individually and as
executive corporate principal and officer
for Blue Sky Engineering, Inc.
Defendants

August 10, 2018

Date



Thomas F. Carlucci
Attorney for Defendants